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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

17 CR 570 (ALC)

6 MICHAEL ARNSTEIN,

7 Defendant.
-----x

8 New York, N.Y.
9 September 15, 2017
10 11:35 p.m.

12 Before:

13 HON. ANDREW L. CARTER, JR.,

14 District Judge

15 APPEARANCES

16 JOON H. KIM,
17 Acting United States Attorney for the
18 Southern District of New York

SEBASTIAN SWETT
19 Assistant United States Attorney

STEVEN L. BROUNSTEIN
20 Attorney for Defendant

21 ALSO PRESENT:

22 RICHARD SMYTHE, FBI
MAXIME VALEZ, U.S. MARSHALS SERVICE

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1 THE DEPUTY CLERK: Criminal cause for an arraignment
2 and change-of-plea hearing in United States versus Michael
3 Arnstein.

4 Counsel, please state your appearance.

5 For the government?

6 MR. SWETT: Good morning, your Honor. Sheb Swett, for
7 the United States. I'm joined at counsel table by Special
8 Agent Richard Smythe, of the FBI, and Deputy Marshal Maxime
9 Valez, from the United States Marshals Service.

10 THE DEPUTY CLERK: And for the defendant?

11 MR. BROUNSTEIN: Steven Brounstein, for Mr. Arnstein.
12 Good morning, sir.

13 THE COURT: Good morning.

14 Has Mr. Arnstein been presented on the complaint
15 previously?

16 MR. SWETT: Mr. Arnstein was presented on the
17 complaint. I believe it was in March, your Honor.

18 THE COURT: And has he been arraigned on the
19 information, or has he waived indictment yet?

20 MR. SWETT: We have a signed waiver of indictment. He
21 has not been arraigned on the information yet.

22 THE COURT: Okay. You say you have a signed waiver of
23 indictment. You're talking about the form? Has he actually --

24 MR. SWETT: He has not waived in open court.

25 THE COURT: Okay.

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1 Mr. Arnstein, I'm going to ask you some questions.
2 I'm going to require that your answers be under oath, so I will
3 ask my wonderful and talented deputy to administer the oath.

4 (Defendant sworn)

5 THE COURT: What is your full name?

6 THE DEFENDANT: Michael Andrew Arnstein.

7 THE COURT: How old are you?

8 THE DEFENDANT: Forty years old.

9 THE COURT: How far did you go in school?

10 THE DEFENDANT: Partial -- some college.

11 THE COURT: Are you currently, or have you recently
12 been, under the care of a physician or a psychiatrist?

13 THE DEFENDANT: No.

14 THE COURT: In the last 24 hours, have you taken any
15 drugs, medicine, or pills, or had any alcoholic beverages?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you been furnished with a copy of the
18 charge against you? Have you seen a copy of the information?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: The information has one count. It charges
21 you with a conspiracy to forge a judge's signature. It reads
22 as follows: "The United States Attorney charges:

23 "From at least in or about February 2014 up to and
24 including in or about February 2017, in the Southern District
25 of New York and elsewhere, Michael Arnstein, the defendant, and

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1 others known and unknown, willfully and knowingly did combine,
2 conspire, confederate, and agree together with each other to
3 forge a judge's signature, in violation of Title 18, United
4 States Code, Section 505.

5 "It was a part and an object of the conspiracy that
6 Michael Arnstein, the defendant, and others known and unknown,
7 willfully and knowingly would and did forge the signature of a
8 judge, register, and other officer of any court of the United
9 States, and forge and counterfeited the seal of any such court,
10 and knowingly concurred in using any such forged or counterfeit
11 signature and seal for the purpose of authenticating any
12 proceeding and document, and tendered in evidence any such
13 proceeding and document with a false counterfeit signature of
14 any such judge, register, and other officer, and a false and
15 counterfeit seal of the court subscribed and attached thereto,
16 knowing such signature and seal to be false and counterfeit, in
17 violation of Title 18, United States Code, Section 505."

18 Overt acts that are charged are:

19 "In furtherance of the conspiracy and to effect the
20 illegal object thereof, the following overt acts were committed
21 in the Southern District of New York and elsewhere:

22 "(a) On or about October 3rd, 2014, Michael Arnstein,
23 the defendant, emailed an individual in the Southern District
24 of New York and instructed that individual to create a
25 counterfeit judicial order by digitally altering a genuine

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1 judicial order;

2 "(b) On or about October 22nd, 2014, Michael
3 Arnstein, the defendant, emailed a copy of a counterfeit
4 judicial order to Google, Inc., and requested that Google
5 de-index Uniform Resource Locators contained in the counterfeit
6 order. Title 18, United States Code, Section 371."

7 Do you understand the nature of the charge contained
8 in the information, Mr. Arnstein?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Have you discussed it with your attorney?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Counsel, do you feel that your client
13 understands the charge against him?

14 MR. BROUNSTEIN: Yes, sir.

15 THE COURT: Mr. Arnstein, that charge contained in the
16 information is a felony. As a result, you have a
17 constitutional right to be charged by an indictment of the
18 grand jury, but you can waive that right and consent to being
19 charged by information of the U.S. Attorney.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Instead of an indictment, this felony
23 charge against you has been brought by the U.S. Attorney by the
24 filing of an information. Unless you waive indictment, you may
25 not be charged with a felony unless a grand jury finds by

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1 return of an indictment that there is probable cause to believe
2 that a crime has been committed and that you committed it. If
3 you do not waive indictment, the government may present the
4 case to the grand jury and ask it to indict you.

5 Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The grand jury is composed of at least 16
8 and not more than 23 persons, and at least 12 grand jurors must
9 find that there is probable cause to believe that you committed
10 the crime with which you are charged before you may be
11 indicted. The grand jury might or might not indict you. If
12 you waive indictment by the grand jury, the case will proceed
13 against you on the U.S. Attorney's information just as though
14 you had been indicted.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you discussed waiving your right to
18 indictment by the grand jury with your attorney?

19 THE DEFENDANT: Yes, I have, sir.

20 THE COURT: Do you understand your right to indictment
21 by a grand jury?

22 THE DEFENDANT: Yes.

23 THE COURT: Have any threats or promises been made to
24 induce you to waive indictment?

25 THE DEFENDANT: No.

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1 THE COURT: Do you wish to waive your right to
2 indictment by a grand jury?

3 THE DEFENDANT: Yes.

4 THE COURT: Defense counsel, is there any reason why
5 your client should not waive indictment?

6 MR. BROUNSTEIN: No, your Honor. I've discussed this
7 thoroughly with him.

8 THE COURT: I believe there is a signed waiver of
9 indictment that I have before me. Mr. Arnstein, is that your
10 signature on that document?

11 THE DEFENDANT: Yes, it is.

12 THE COURT: Before signing it, did you read it?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: Did you discuss it with your attorney?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Did you sign that document because you
17 wished to waive your right to indictment?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: I find that the waiver is knowingly and
20 voluntarily made, and I accept it. We will proceed to
21 arraignment on the information.

22 Mr. Arnstein, again, you've indicated that you
23 understand the nature of the charge against you in the
24 information, correct?

25 THE DEFENDANT: Yes, I have.

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1 THE COURT: The Court will enter a plea of not guilty
2 on your behalf to the charge in the information.

3 Now, my understanding is that, Mr. Arnstein, you wish
4 to withdraw that plea of not guilty and enter a plea of guilty
5 to the sole count of the information pursuant to an agreement
6 with the government. Is that correct?

7 THE DEFENDANT: That's accurate, your Honor.

8 THE COURT: Mr. Arnstein, you have a constitutional
9 right to continue to plead not guilty. If you persist in that
10 plea of not guilty, you have the right to a speedy and public
11 trial by a jury. Do you understand?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: At that trial, and at every stage of this
14 criminal litigation, you have the right to be represented by an
15 attorney. Do you understand?

16 THE DEFENDANT: Yes.

17 THE COURT: If you cannot afford to hire your own
18 attorney, the Court will give you an attorney for free. Do you
19 understand?

20 THE DEFENDANT: Yes.

21 THE COURT: Counsel, are you retained or appointed on
22 this matter?

23 MR. BROUNSTEIN: I'm retained, your Honor.

24 THE COURT: At trial, you would be presumed innocent.
25 You would not have to prove that you're innocent. The burden

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1 of proof would be on the government at all times, and they
2 would have to prove each and every element of the crime charged
3 beyond a reasonable doubt in order for you to be convicted of
4 that crime.

5 Do you understand?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: So let's talk about those elements as it
8 relates to the sole count of the information.

9 For the government to prove you guilty of the crime
10 charged in Count One, conspiracy to forge a judge's signature,
11 the government would have to prove the following beyond a
12 reasonable doubt: That from about February 2014 up to and
13 including February 2017, that you willfully and knowingly
14 conspired with others to commit a crime.

15 Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: A conspiracy requires that you agree with
18 at least one other person to commit a criminal act. Do you
19 understand?

20 THE DEFENDANT: Yes.

21 THE COURT: The government would have to prove that
22 you entered into that agreement knowingly and willfully. Do
23 you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: And knowingly and willfully understanding

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1 the purpose of that agreement. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And the government would have to prove
4 that the purpose or object of that agreement or conspiracy was
5 to forge a judge's signature in violation of Title 18, United
6 States Code, Section 505. Do you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: And the government would be required to
9 prove that you knowingly and willfully agreed with others that
10 you would or someone in that conspiracy would forge the
11 signature of a judge. Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: And that that was a judge of the United
14 States. Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: And that you -- or that the people in the
17 conspiracy forged the signature of that judge for the purpose
18 of authenticating a document. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And that at the time that you or someone
21 in the conspiracy forged the signature of a federal judge, of a
22 United States judge, to authenticate a document, that you knew
23 that the signature was false and counterfeit. Do you
24 understand?

25 THE DEFENDANT: Correct. Yes.

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1 THE COURT: In addition, if you plead guilty, you will
2 be waiving your right to challenge the venue of the
3 prosecution. Venue means that the government needs to bring
4 the case in the judicial district where the crime took place.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Counsel for the government, have I left
8 out any elements of the offense?

9 MR. SWETT: I would just add that as part of the
10 conspiracy charge, the government would need to prove that a
11 member of the conspiracy took an overt act in furtherance of
12 the conspiracy.

13 THE COURT: Okay. Thank you.

14 In addition, Mr. Arnstein, the government would have
15 to prove the commission of at least one overt act. Do you
16 understand?

17 THE DEFENDANT: Yes.

18 THE COURT: The overt acts charged in the information
19 are that: One, you emailed an individual in the Southern
20 District of New York and instructed that individual to create a
21 counterfeit judicial order by digitally altering a genuine
22 judicial order. Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: The other overt act that the government
25 would need to prove -- they'd have to prove one of these overt

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1 acts. The other one that's alleged in the information is that
2 on or about October 22nd, 2014, that you emailed a copy of a
3 counterfeit judicial order to Google and requested that Google
4 de-index Uniform Resource Locators contained in the counterfeit
5 order.

6 Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Thank you for that, counsel for the
9 government. Are there any other elements that I have left out?

10 MR. SWETT: No, your Honor.

11 THE COURT: Okay.

12 Counsel for the defense, have I left out any elements?

13 MR. BROUNSTEIN: No, sir.

14 THE COURT: So, Mr. Arnstein, the government would
15 have to prove each and every one of those elements beyond a
16 reasonable doubt. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: In order to attempt to prove those
19 elements beyond a reasonable doubt, the government would call
20 witnesses. Your lawyer could question witnesses. Do you
21 understand?

22 THE DEFENDANT: Yes.

23 THE COURT: Your lawyer could object to evidence that
24 the government sought to introduce against you. Do you
25 understand?

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1 THE DEFENDANT: Yes, I do.

2 THE COURT: You could call your own witnesses at
3 trial, and your lawyer would have the subpoena power of the
4 United States to make witnesses come to court for you. Do you
5 understand?

6 THE DEFENDANT: Yes.

7 THE COURT: In addition, you could testify on your own
8 behalf at trial, but, at the same time, you could not be forced
9 to testify because you have a right or privilege against
10 self-incrimination. What the right or privilege against
11 self-incrimination means is that you cannot be required to say
12 anything out of your own mouth that makes you appear guilty.

13 Do you understand?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: So, even if you are guilty, you are not
16 required to plead guilty. You could remain silent and force
17 the government to attempt to prove each and every element of
18 the crime charged beyond a reasonable doubt. Do you
19 understand?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: If the government failed to prove any
22 element of the crime charged beyond a reasonable doubt, the
23 jury would be duty-bound to find you not guilty. Do you
24 understand?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: So, again, even if you are guilty, you are
2 not required to plead guilty. Do you understand?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: If you plead guilty, I will have to ask
5 what you did that makes you guilty of the crime charged, and
6 when you answer those questions, you'll be saying things out of
7 your own mouth that make you appear guilty, thereby giving up
8 your right or privilege against self-incrimination.

9 Do you understand?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: Let's talk about the sentencing process.

12 If I accept your plea of guilty, you'll meet with the
13 probation department, and they will prepare a presentence or
14 probation report. That report will have information about you
15 and the crime that you are alleged to have committed.

16 Do you understand?

17 THE DEFENDANT: Yes.

18 THE COURT: That report will also have the probation
19 department's sentencing guideline calculation. Have you and
20 your attorney discussed the sentencing guidelines and how they
21 might apply in your case?

22 THE DEFENDANT: Yes, we have.

23 THE COURT: The sentencing guidelines are advisory.

24 What that means is, while I am required to determine the
25 guideline range that applies to your case, once I make that

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1 determination, I am not required to sentence you with that
2 range. Do you understand?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: I will determine the guideline range, and
5 I will determine the ultimate sentence in this case. So, as
6 you sit here today, there is no promise as to what your
7 guideline range will be, nor is there a promise as to what your
8 sentence will be. Do you understand?

9 THE DEFENDANT: Yes, your Honor, I understand.

10 THE COURT: Let's talk about Court Exhibit 1, your
11 agreement with the government. Your signature appears on the
12 last page, I believe. Is that, in fact, your signature on the
13 last page of that document?

14 THE DEFENDANT: Yes, it is, your Honor.

15 THE COURT: Before signing that document, did you read
16 it?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: Do you understand it?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Did you discuss it with your attorney?

21 THE DEFENDANT: Yes, we discussed it.

22 THE COURT: Does this document, Court Exhibit 1,
23 contain the entirety of your agreement with the government?

24 THE DEFENDANT: Yes, it does.

25 THE COURT: Counsel for the government and the

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1 defense, is that correct?

2 MR. SWETT: That is correct, your Honor.

3 MR. BROUNSTEIN: Yes, Judge, it encompasses what we
4 agreed upon and also what we disagreed upon as well.

5 THE COURT: Okay.

6 Let's talk about the statutory penalties that apply.
7 For Count One, there's a maximum sentence of five years'
8 imprisonment. Do you understand?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: There's a maximum term of three years of
11 supervised release. Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: Supervised release is like a term of
14 probation you would serve after a term of custody. You will be
15 subject to drug testing, visits to a probation officer's
16 office, and other limitations on your freedom. Do you
17 understand?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: If you were to violate a condition of
20 supervised release, you could be sentenced to an additional
21 term of custody and an additional term of supervised release
22 without credit for time previously served in custody or on
23 supervised release. Do you understand?

24 THE DEFENDANT: Yes, I understand.

25 THE COURT: You'd also be subject to the possibility

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1 of a fine, which would be based on your ability to pay it. For
2 Count One, the maximum fine is \$250,000. Do you understand?

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: In addition, you would be subject to a
5 special assessment of \$100, which is like a fine, except it is
6 mandatory, and I must impose the \$100 special assessment, and
7 you must pay it. Do you understand?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Have you seen the government's guideline
10 estimate that's contained in your agreement?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: I want to reiterate to you that that is
13 simply an estimate. That is not binding on the probation
14 department, it's not binding on me. Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I will determine the guideline range, and
17 I will determine the sentence. Do you understand?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: I want to make sure that you understand
20 that if you are not a United States citizen, your guilty plea
21 and conviction make it very likely that you will be deported
22 from the United States. Do you understand?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Have you discussed that with your
25 attorney?

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1 THE DEFENDANT: Well --

2 MR. BROUNSTEIN: He's a citizen, your Honor.

3 THE DEFENDANT: I'm a citizen.

4 THE COURT: Okay.

5 MR. BROUNSTEIN: He was born here.

6 THE COURT: Does the government have any reason to
7 doubt that?

8 MR. SWETT: No, your Honor.

9 THE COURT: You have a statutory right to appeal.

10 There are time constraints on your ability to file an appeal,
11 and you need to talk to your lawyer about that following
12 sentence. If you could not afford to hire a lawyer to help you
13 prosecute the appeal, the Court would give you a lawyer for
14 free.

15 Do you understand?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Although you have a statutory right to
18 appeal, under your agreement, you have agreed not to file a
19 direct appeal, nor bring a collateral challenge, nor seek a
20 sentence modification of any sentence within or below the
21 guideline range of 12 to 18 months' imprisonment.

22 Do you understand?

23 THE DEFENDANT: Yeah, that's correct.

24 THE COURT: Do you have any questions for me before we
25 continue?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: Do you have any questions you'd like to
3 ask your attorney in private before we continue?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you satisfied with your legal
6 representation up to this point?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Defense counsel, are you aware of any
9 reason why your client should not plead guilty?

10 MR. BROUNSTEIN: No, sir.

11 THE COURT: Are you aware of any legal defense to the
12 charge?

13 MR. BROUNSTEIN: No, your Honor.

14 THE COURT: Mr. Arnstein, are you willing to give up
15 your rights to a trial, the other rights that we have
16 discussed?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Other than what's contained in Court
19 Exhibit 1, your agreement with the government, has anyone made
20 any promises to induce you to give up those rights?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone made any threats to force you
23 to give up those rights?

24 THE DEFENDANT: No, sir.

25 THE COURT: How do you plead to Count One of the

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1 information, guilty or not guilty?

2 THE DEFENDANT: I plead guilty.

3 THE COURT: What did you do that makes you guilty?

4 THE DEFENDANT: Between the approximate dates of
5 February 2014 to February 2017, I, with the assistance of
6 others, agreed to forge a judge's signature on a court order
7 that was purported to emanate from the Southern District of New
8 York. Prior to doing that, I had obtained a legal court order
9 from the court seeking injunctive relief against an individual
10 who conducted a defamatory campaign against myself and my
11 business. After receiving that court order, I forged the
12 judge's signature on subsequent orders that I created seeking
13 similar relief. I knew that what I was doing was wrong, and I
14 accept responsibility for my actions.

15 THE COURT: What did you do with those orders, once
16 you created those counterfeit orders?

17 THE DEFENDANT: I submitted them to Google's legal
18 department to request that they remove defamatory links about
19 me and my company off of the Internet.

20 THE COURT: When you submitted those orders to Google,
21 did you, in fact, know that those orders were counterfeit and
22 that the judge's signature on those orders was forged?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Did you do that pursuant to an agreement
25 that you had with other people to do that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Was it your intention that Google believe
3 this document, this order? Did you want Google to believe that
4 this order was, in fact, authentic?

5 THE DEFENDANT: Yes.

6 THE COURT: Was that part of the agreement that you
7 had with others as well?

8 THE DEFENDANT: Yes, it is.

9 THE COURT: Which boroughs were you in when you were
10 doing this?

11 THE DEFENDANT: Manhattan.

12 THE COURT: Counsel for the government, is there any
13 further allocution requested?

14 MR. SWETT: No, your Honor.

15 THE COURT: Counsel for the defense?

16 MR. BROUNSTEIN: No, Judge.

17 THE COURT: I find that Mr. Arnstein understands the
18 rights that he's waiving by pleading guilty. I further find
19 that there is a factual basis for the plea, and I will accept
20 his plea of guilty. We will schedule a sentencing for Tuesday,
21 January 16th, at 10:00 a.m.

22 Is there anything else from the government or the
23 defense?

24 MR. SWETT: No, Judge.

25 MR. BROUNSTEIN: Judge, I do have an application,

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1 Judge. When Mr. Arnstein was originally presented before the
2 Magistrate's Court, he was released on his own recognizance,
3 but there were certain travel restrictions placed on him.
4 Those travel restrictions, he actually -- his residence now is
5 in Hawaii. He was originally -- they went to arrest him in
6 Hawaii, but his business was in New York, and he surrendered to
7 authorities when he found out that he was being arrested.

8 He was released on his own recognizance with travel
9 restrictions. I have made, Judge -- also, what the government
10 has allowed him to do is there are certain travel within the
11 United States, which the magistrate judge allowed, that with
12 the government's consent, he can travel to those places.
13 However, he does sometimes require to travel internationally.
14 We did make two applications before the magistrates to travel
15 internationally prior, and those applications were denied.
16 Judge, I am making a specific application now to this Court.

17 Those two prior applications, Judge, had to do with
18 his business, and I can certainly document that to you at a
19 later date. Mr. Arnstein is a member of the United States --
20 really Spartathlon ultramarathon team. He is an ultramarathon
21 runner who runs hundred-mile distances. I did receive a letter
22 that was actually addressed to the Court from the captain of
23 that team, who is an attorney understanding Mr. Arnstein's
24 restrictions, asking permission to allow him to represent the
25 United States at an ultramarathon run in Greece during the last

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1 week of September into the first week of October. If the Court
2 would allow him to travel, what I would do is this: I would
3 provide all the travel information to both the government and
4 to pretrial services. Upon returning to the United States, I
5 would have him surrender his passport within 48 hours again to
6 pretrial services. And, Judge, I will detail and document all
7 of his activities and places he's staying during that. It is a
8 request. I do have it addressed to the Court. I'm asking the
9 Court to allow him to do that, so he can represent the United
10 States in this event.

11 THE COURT: And what exactly is his -- putting aside
12 the ultramarathon running, what is his business that's in
13 Hawaii?

14 MR. BROUNSTEIN: No, no. He lives in Hawaii. His
15 residence is in Hawaii. His business requires international
16 travel, but he hasn't. He's in -- which is really part and
17 parcel of this matter, is he sort of manufactures and sells
18 sapphire jewelry throughout the world, and he has a business
19 interest, it's 12 employees who are in Sri Lanka and 12
20 employees in New York, and his family lives in Hawaii, which he
21 travels back and forth occasionally. There hasn't been any
22 problems with that, Judge. He's lived up to all his
23 requirements. He's reported to pretrial services when
24 necessary. I speak to him probably at least two to three times
25 a week, either by speaking to him or via email. I would ask

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1 the Court allow him to go and represent his country in this
2 matter.

3 I do have -- like I said, Judge, I do have a letter
4 addressed to the Court from the captain of that team which
5 explains the travel and what this event is. He has represented
6 the United States in this event before.

7 THE COURT: What is it -- if he were allowed to do
8 this, who does this actually benefit?

9 MR. BROUNSTEIN: Well, Judge, it's a team effort
10 representing the United States of America. There's no money
11 involved, there's nothing. It's just a question of national
12 pride that he involves himself. He's been on this team for a
13 number of years. He's a very well-recognized ultramarathon
14 runner, and he wants to join his team representing his country.
15 He's done this in the past. He is with others, he's not by
16 himself. There is a team captain, and he is requesting
17 permission to do that, to represent his country.

18 THE COURT: What exactly would there be preventing him
19 from, if he were allowed to do this, from not only running in
20 the ultramarathon, but running from this proceeding and not
21 coming back to the United States?

22 MR. BROUNSTEIN: Judge, as I've stressed, that there
23 are -- the guidelines in this case are not the type of
24 guidelines where I think an individual would basically risk his
25 business. He has 24 employees, he has a home in Yonkers. I

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1 just think it's highly, highly unlikely that an individual --
2 and certainly, Judge, there are extenuating circumstances to
3 this case. The reason why he was arraigned earlier on and
4 presented is that I could present an extensive application to
5 the government to defer prosecution in this matter because I
6 think there really are extenuating circumstances, and I will
7 lay that out to the Court at the time of sentence, but this is
8 a unique situation. So I don't believe he is going to run for
9 anything. He voluntarily surrendered when he was arrested. He
10 understands the nature and circumstances of his plea, he
11 understands what he is facing. I just don't see him as an
12 individual who is not going to return to court. He understands
13 what his obligations are. He's been released on his own
14 recognizance. There have been no situations where he's been
15 late or even missed appointments in my office. He's been a
16 responsible individual. And I think when the Court --
17 ultimately, when the Court understands the nature of the facts
18 and circumstances of this case, I think the Court will have a
19 very, if not sympathetic, understanding of what happened here
20 in this matter.

21 THE COURT: Okay. Again, it seems to me that from
22 what you've described, there's nothing particularly about his
23 business that would require him to be here. In the modern age
24 of technology, he could certainly communicate with his staff
25 remotely if he were in another country. The other thing is

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1 there's nothing particularly -- while I'm sure he cares
2 tremendously about running an ultramarathon, there's nothing
3 particularly compelling about that for me to allow him to
4 travel outside of the country to do that when he has been, it
5 seems to me, sort of generously allowed to simply not really
6 have a lot of restrictive conditions in terms of his monitoring
7 at this point. He has now -- to the extent that there are any
8 changed circumstances, he has now been convicted of this crime,
9 and has now pled guilty and has even more incentive to
10 potentially flee.

11 The nature of the offense -- and I am sure I will get
12 more about that as we get closer to sentencing -- but the
13 nature of the offense is one that doesn't particularly show a
14 whole lot of reverence for the judicial process, so I am very
15 concerned that he is a risk of flight. I'm not so concerned
16 he's a risk of flight that I think he needs to be remanded, but
17 I'm inclined to deny this application.

18 But I'll hear from the government, if there's anything
19 they want to say.

20 MR. SWETT: The government agrees -- or the
21 government's position would be that it's not appropriate to
22 allow him to travel internationally. The Court has set forth
23 many of the arguments the government would make.

24 I would also just note a couple of things: First of
25 all, the first we heard of this application was this morning,

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1 to my knowledge. The defendant has not yet even raised this
2 with pretrial, and, obviously, their view would be relevant
3 prior to granting such an application.

4 Secondly, given that we only learned about it, we have
5 no idea the status of our extradition treaties with Greece.
6 The two countries that Mr. Arnstein sought to travel to
7 previously were China and England. One of those countries,
8 obviously, would pose very serious problems for extradition,
9 but the other one, the United Kingdom, is a country with which
10 we have strong legal relationships, and even then, on a
11 business-related trip, the Court found it was not compelling
12 enough to grant what is an extraordinary allowance for someone
13 who is on pretrial supervision, let alone someone who, as the
14 Court noted, has now pled guilty to the crimes.

15 So, for those reasons and the reasons that the Court
16 raised, we think that this application should not be granted.

17 MR. BROUNSTEIN: Your Honor, I understand the Court's
18 position. I just want to answer one query the Court made about
19 operating his business remotely. Mr. Arnstein is the face of
20 that business. Most transactions which are conducted,
21 important transactions, he does on a face-to-face basis, and
22 one of the things that really has hurt his business was his
23 inability to travel during this time period, particularly the
24 trip to England where he was going to meet individuals from
25 around the world who basically mine these stones that he buys.

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1 So I say, Judge, if he were to flee, he wouldn't just be
2 risking the loss of his freedom, he would lose his entire
3 business.

4 These people -- this is really a third-generation
5 business. He supports his family and his 24 employees, who he
6 is extremely dedicated to and they are dedicated to him if he
7 fled. So I understand the Court's position, but this is
8 somewhat of a unique circumstance, and, as I said, he has met
9 all his obligations, and I have no doubt that he will return to
10 court at any time the Court requested him.

11 THE COURT: Okay. Again, as you've set forth, this is
12 not travel for business, this is not travel to see some sick
13 family, this is travel so he can run in a race.

14 MR. BROUNSTEIN: It is, Judge.

15 THE COURT: So that's denied. The application is
16 denied.

17 MR. BROUNSTEIN: I understand, your Honor.

18 THE COURT: Anything else from the government?

19 MR. SWETT: No. Thank you, your Honor.

20 THE COURT: Anything else from the defense?

21 MR. BROUNSTEIN: No, sir.

22 THE COURT: Okay. We are adjourned.

23 * * *